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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,880	04/15/2004	Alain Romier	28944/40098	7325
29471	7590	09/26/2005	EXAMINER	
MCCRACKEN & FRANK LLP 200 W. ADAMS STREET SUITE 2150 CHICAGO, IL 60606			ADDIE, RAYMOND W	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/824,880

Applicant(s)

ROMIER ET AL.

Examiner

Raymond W. Addie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 12-14, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas et al. # 6,599,057 B2.

Thomas et al. discloses a method of laying blacktop paving material comprising bitumen coated aggregate, the method comprising the steps of:

Receiving a bitumen-coated aggregate, such as RAP (recycled asphalt).

Mixing, by kneading, a mixture of water and wetting agent with the bitumen-coated aggregate to form a blacktop paving material.

Spreading the blacktop paving material on a surface for receiving the blacktop material immediately after the mixture of water and wetting agent is mixed with the bitumen-coated aggregate. See col. 5, Ins. 13-33; col. 9, ln. 8-col. 10, ln. 7.

Wherein the water and wetting agent component is provided in a weight concentration of approximately 1.5%-4.5%. See col. 4, Ins 63-67.

In regards to claim 17 Thomas et al. discloses a self-propelled paver (unnumbered See Col. 10, Ins. 4-7) and having a metering device (col. 9, Ins. 39-50), for metering the mixture of water and wetting agent to a mixer for mixing with pre-coated asphaltic

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aggregate. A hopper for receiving said pre-coated asphaltic aggregate(RAP).

And a spreading device, such as a screed, to lay the blacktop paving material on a surface, immediately after mixing. See Col.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 10, 15, 16, 19 are rejected under 35 U.S.C. 102(a) as being anticipated by Omann # 6,588,973 B1.

Omann discloses a method of laying hot blacktop paving material comprising the use of pre-coated aggregates, such as RAP, RARW and RAM. The method comprising the steps of:

Receiving bitumen coated aggregate into a receiver (152) at a temperature of approximately 200<sup>0</sup>-350<sup>0</sup>F.

Mixing the hot, bitumen-coated aggregate with a mixture comprising: water and wetting agent, such as emulsion.

Spreading the hot mixture on a surface for receiving the hot mixture immediately after the mixture of water, wetting and bitumen-coated aggregate is mixed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Thomas et al. # 6,599,057 B2.

Thomas et al. discloses essentially all that is claimed, with respect to claim 10 above, to include the use of .5%-10% by weight of a wetting agent in the mixture of water and wetting agent. See Col. 4, Ins. 25-26. Although Thomas et al. does not specify the molar concentration of the wetting agent in the mixture of water and wetting agent, the concentration is provided by weight. Further it appears as though a weight basis of .5%-10% would correspond to a molar concentration of .1-1.5% of the water/wetting agent mixture. Therefore, since the emulsion disclosed by Thomas et al., appears to be identical to the mixture of water and wetting agent, as claimed, it would be obvious, if not inherent, that Thomas et al., contemplates the use of an emulsion comprising a wetting agent molar concentration of approximately .1%-1.5%, in order to form a bitumen based pathway for vehicles or pedestrians.

***Response to Amendment***

4. Applicant's amendment canceling claims 1-9 and introducing New Claims 10-19 is acknowledged.

***Response to Arguments***

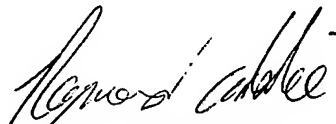
5. Applicant's arguments with respect to claims 10-19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 6AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Raymond Addie  
Patent Examiner  
Group 3600**

**9/21/05**